



19 DEC 2006

49443  
PEARL COHEN ZEDEK LLP  
1500 BROADWAY, 12<sup>TH</sup> Floor  
New York, NY 10036

In re Application of :  
GLUKHOVSKY *et al* :  
U.S. Application No.: 10/562,865 :  
PCT No.: PCT/US03/27804 :  
Int. Filing Date: 04 September 2003 :  
Priority Date: 04 September 2002 :  
Attorney Docket No.: P-5857-US :  
For: IMAGING SENSOR ARRAY AND :  
DEVICE AND METHOD FOR USE :  
THEREOF :

**DECISION**

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed 04 October 2006.

**BACKGROUND**

On 04 April 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee was required. Applicants were given two months to respond with extensions of time available.

On 04 October 2006, applicants filed a response which was accompanied by, *inter alia*, the subject petition, a declaration signed by two of the three named inventors; an statement by Rachel Bentov; a four-month extension; the petition fee of \$200.00; the \$130.00 surcharge fee and exhibits A - B.

**DISCUSSION**

Applicants claim that co-inventor Israel Mendel refuses to cooperate in the above-identified application and have filed the subject petition in response to the Form PCT/DO/EO/905 mailed 04 April 2006.

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventors.

Concerning item (1), the petition fee of \$200.00 has been paid.

Regarding item (2), applicants' burden in showing that an inventor refuses to cooperate is explained in section 409.03(d) of the MPEP. Several pertinent segments are listed below:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted.

In this case, petitioners have submitted a declaration by Rachel Bentov who claims that she submitted a complete copy of the application and a declaration were mailed to the nonsigning inventor on 12 September 2006. Ms. Bentov states that the nonsigning inventor contacted her on 14 September 2006 and initially agreed to sign the documents. After further discussions, Ms. Bentov declares that Mr. Mendel told her via telephone on 03 October 2006 that he was not going to sign the documents. , Petitioners have submitted a copy of an email verifying that a complete copy of the subject application was forwarded to Mr. Mendel.

This evidence is sufficient to show a refusal by the inventor to cooperate and meets the requirements of the MPEP. Item (2) of 37 CFR 1.47(a) is satisfied.

With regards to item (3), the last known address of co-inventor Israel Mendel is listed as:

29a Albert Shvaytzer St.

Haifa, 34995 Israel

Concerning item (4), the 37 CFR 1.47(a) applicant submitted a declaration signed by two of the three co-inventors on behalf of themselves and the nonsigning joint inventor. This declaration meets the requirements of section 409.03(a) and is in compliance with 37 CFR 1.497(a) and (b).

All requirements of 37 CFR 1.47(a) are complete.

### **CONCLUSION**

Applicants' petition under 37 CFR 1.47(a) is **GRANTED**.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 04 September 2003 under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 04 October 2006.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record and will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



James Thomson

Attorney Advisor

Office of PCT Legal Administration

Tel.: (571) 272-3302